

The opportunity to participate in pre- or post-inspection conferences has also been provided. Presence of a representative of miners at opening conference helps miners to know what the concerns and focus of the inspector will be, and attendance at closing conference will enable miners to be fully apprised of the results of the inspection. It is the Committee's view that such participation will enable miners to understand the safety and health requirements of the Act and will enhance miner safety and health awareness. To encourage such miner participation it is the Committee's intention that the miner who participates in such inspection and conferences be fully compensated by the operator for time thus spent. To provide for other than full compensation would be inconsistent with the purpose of the Act and would unfairly penalize the miner for assisting the inspector in performing his duties. The Committee also recognizes that in some circumstances, the miners, the operator or the inspector may benefit from the participation of more than one representative of miners in such inspection or conferences, and this section authorizes the inspector to permit additional representatives to participate.

(Emphasis added)

Legislative History of the Federal Mine Safety and Health Act of 1977, 95th Congress, 2nd Session 616, 617 (July 1978).

In short, the Senate in its formal report had no difficulty deciding that the inspector might include additional miners' representatives to participate with him in the inspections.

In support of its position, Emery cites Emery Mining Corporation, 783 F.2d 155, 158 (10th Cir. 1986), Council of Southern Mountains, Inc., v. Federal Mine Safety and Health Review Commission, 751 F.2d 1418 (DC Cir. 1985), and Stouffer Chemical Company v. E.P.A., 647 F.2d 1075 (10th Cir. 1981), among other cases.

The cited Emery case is not controlling. In Emery the court reviewed the scope of a different section of Act, namely § 115. Further, the Court emphasized that none of the Secretary's "otherwise extensive regulations" addressed the issue of the operator's liability to pay newly hired miners for their costs in receiving 32 hours of miner training, 383 F.2d at 159. The instant case involves the Secretary's interpretative bulletin but more particularly he has defined a representative of miners to be a person or organization which represents two or more miners. Mr. Rabbitt is such a person and the UMWA, intervenor, is such an organization.

In Council of Southern Mountains the Council, a non-employee miner representative, sought access to mine property to monitor certain training classes. Specifically, the Court noted that "(i)t was not, in these circumstances, asserting its right under